

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

COMETA, LLP.,)	
)	
Plaintiff,)	4:07CV3243
)	
v.)	
)	
NORLAND INT'L, INC.)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's motion to alter progression schedule to permit the filing of an amended answer (Filing No. 36) and motion for leave to amend answer (Filing No. 38). This action is premised upon the contract, and the Court finds that the provisions of the contract, which might limit the recovery of plaintiff, would be applicable absent being alleged as an affirmative defense in its answer.

The plaintiff cannot claim surprise with respect to this allegation, and in the interests of justice, the Court finds that defendant's motions should be granted. Accordingly,

IT IS ORDERED:

1) Defendant's motion to alter progression scheduled to permit the filing of an amended answer is granted;

2) Defendant's motion for leave to amend answer is granted; defendant shall have until December 22, 2008, to file its amended answer.

DATED this 16th day of December, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court